

(f) UNREASONABLE ASSERTION OF DEFENSE.—If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney fees under section 285.

(g) INVALIDITY.—A patent shall not be deemed to be invalid under section 102 or 103 solely because a defense is raised or established under this section.

(Added Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4302(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–555; amended Pub. L. 112–29, §5(a), Sept. 16, 2011, 125 Stat. 297.)

AMENDMENTS

2011—Pub. L. 112–29 amended section generally. Prior to amendment, section related to defense to infringement based on earlier inventor.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–29, §5(c), Sept. 16, 2011, 125 Stat. 299, provided that: “The amendments made by this section [amending this section] shall apply to any patent issued on or after the date of the enactment of this Act [Sept. 16, 2011].”

EFFECTIVE DATE

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, subtitle C, §4303], Nov. 29, 1999, 113 Stat. 1536, 1501A–557, provided that: “This subtitle [enacting this section and provisions set out as a note under section 1 of this title] and the amendments made by this subtitle shall take effect on the date of the enactment of this Act [Nov. 29, 1999], but shall not apply to any action for infringement that is pending on such date of enactment or with respect to any subject matter for which an adjudication of infringement, including a consent judgment, has been made before such date of enactment.”

CHAPTER 29—REMEDIES FOR INFRINGEMENT OF PATENT, AND OTHER ACTIONS

Sec.	
281.	Remedy for infringement of patent.
282.	Presumption of validity; defenses.
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294.	Voluntary arbitration.
295.	Presumption: Product made by patented process.
296.	Liability of States, instrumentalities of States, and State officials for infringement of patents.
297.	Improper and deceptive invention promotion.
298.	Advice of counsel.
299.	Joinder of parties.

AMENDMENT OF ANALYSIS

Pub. L. 112–29, §3(h)(2), (n), Sept. 16, 2011, 125 Stat. 289, 293, provided that, effective upon

the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, item 291 of this analysis is amended to read “Derived patents.”. See 2011 Amendment notes below.

AMENDMENTS

2011—Pub. L. 112–29, §19(d)(2), Sept. 16, 2011, 125 Stat. 333, added item 299.

Pub. L. 112–29, §17(b), Sept. 16, 2011, 125 Stat. 329, added item 298.

Pub. L. 112–29, §3(h)(2), Sept. 16, 2011, 125 Stat. 289, amended item 291 generally, substituting “Derived patents” for “Interfering patents”.

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4102(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–554, added item 297.

1992—Pub. L. 102–560, §2(b), Oct. 28, 1992, 106 Stat. 4230, added item 296.

1988—Pub. L. 100–418, title IX, §§9004(b), 9005(b), Aug. 23, 1988, 102 Stat. 1566, inserted “and other remedies” in item 287 and added item 295.

1982—Pub. L. 97–247, §17(b)(2), Aug. 27, 1982, 96 Stat. 323, added item 294.

§ 281. Remedy for infringement of patent

A patentee shall have remedy by civil action for infringement of his patent.

(July 19, 1952, ch. 950, 66 Stat. 812.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§67 and 70, part (R.S. 4919; R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, §6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, §8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, §1, 60 Stat. 778).

The corresponding two sections of existing law are divided among sections 281, 283, 284, 285, 286 and 289 with some changes in language. Section 281 serves as an introduction or preamble to the following sections, the modern term civil action is used, there would be, of course, a right to a jury trial when no injunction is sought.

§ 282. Presumption of validity; defenses

A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. Notwithstanding the preceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of nonobviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1). The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.

The following shall be defenses in any action involving the validity or infringement of a patent and shall be pleaded:

(1) Noninfringement, absence of liability for infringement or unenforceability,

(2) Invalidity of the patent or any claim in suit on any ground specified in part II of this title as a condition for patentability,

(3) Invalidity of the patent or any claim in suit for failure to comply with—

(A) any requirement of section 112, except that the failure to disclose the best mode

¹ So in original. Does not conform to section catchline.